(3)

IN THE HIGH COURT OF CHHATTISGARH : BILASPUR

Criminal Appeal No. 199 /2001

APPELLANT (In Jail) : Suresh
S/o Sher Singh Gaund
R/o Village-Bhod Gaon
P.S. Malajkhan Distt. Mandla
At present R/o Veer Gaon
P.S.Kurla Distt. Raipur.

- Versus -

RESPONDENT : State of Chhattisgarh
Through S.H.O. P.S. Kurla.

CRIMINAL APPEAL UNDER SECTION 374(2) C.R.P.C.

(52)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

M.F.A.

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Division Bench: -
Hon'ble Mr. L.C. Bhadoo and
Hon'ble Mr. V.K. Shrivastava, JJ.

14.9.2006

Mr. K.K. Singh, Advocate for the appellant.

Mr. U.N.S. Deo, Additional Public Prosecutor with Mr. Akhil Mishra, P.L. for the State/respondent.

Oral judgment dictated on *Dais*.

Per L.C. Bhadoo, J: -

This appeal is directed against the judgment of conviction & order of sentence dated 19th January, 2001 passed by learned Sessions Judge, Raipur in S.T. No.130/98, whereby learned Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the I.P.C. for committing murder of his wife namely Ramkali, sentenced him to suffer imprisonment for life.

The prosecution case, in brief, is that on 24.10.1997 at about 8.00 p.m. when the accused/appellant, his wife Ramkali and three daughters were in the room, some altercation took place between accused & deceased and accused/appellant threw a burning kerosene lamp on Ramkali, as a result of which Sari of Ramkali had caught fire and she started burning. Ramkali started raising screams, on which her daughters came out of the room and started shouting 'save-save'. Hearing the cries, the landlord Awadhram (PW-3) came on the scene and saw that Ramkali was burning in the room and accused was sitting on the cot in that room. On enquiry made by Awadhram from the accused/appellant that as to how Ramkali has been burnt, he

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replied that let her die. Thereafter, Ramkali was taken to the Medical College Hospital, Raipur and she was admitted in the casualty ward. On examination it was found that she had received burn injuries upto 75%. Dehati nalishi (Ex.P-9) was given by Babli, daughter of accused & deceased, in the Police Station Urla, based on which F.I.R. (Ex.P-10) was registered for commission of offence under Section 307 of the IPC. Ramkali was examined by Dr. G.P. Dewangan (PW-14) and he noted that there were superficial burn at chest, abdomen (whole), both thighs upto knee (whole), both arms (whole) back (whole) and percentage of burn was 75%. He prepared the report Ex.P-18. Babli, daughter of deceased & accused, was also examined by the same doctor and he prepared the injury report Ex.P-19, in which he noticed that the left elbow was burnt. The Executive Magistrate Shri Ashok Tiwari (PW-7) was requested by the police to record the dying declaration of Ramkali and on their request he recorded the dying declaration (Ex.P-8) of Ramkali. However, during treatment she succumbed to the burn injuries in the hospital on 27.10.1997, therefore, a merg intimation (Ex.P-16) was given by Ward-boy Suresh Baghel, based on that A.S.I. Shri Gulab Das also sent the merg intimation (Ex.P-17) and the offence was converted into Section 302 of IPC.

The Investigating Officer after giving notice (Ex.P-1) to the Panchas prepared the Panchnama (Ex.P-2) of the dead body of Ramkali. He took into possession one half burnt sari, blouse, petticoat, kerosene lamp, which was thrown on Ramkali by the accused, cap & wick of lamp and one yellow colour bed sheet were taken into possession under Ex.P-5 from the place of occurrence. Postmortem of the body of deceased Ramkali was conducted by P.M.O.

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Dr. S.K. Dadu (PW-15), who prepared the postmortem report Ex.P-20. Recovered articles were sent for examination to Forensic Science Laboratory, Sagar, from where report Ex.P-24 was received.

After completion of usual investigation, charge sheet was filed against the accused/appellant in the Court of learned Judicial Magistrate First Class, Raipur, who in turn committed the case to learned Sessions Judge, Raipur for trial.

The prosecution in order to establish the charge against the accused/appellant examined 21 witnesses. On the other hand, statement of accused/appellant was recorded under Section 313 of Cr.P.C. in which he pleaded innocence about the incident and submitted that at the time of incident he was not at the residence. He also stated that he does not know why the witnesses have deposed against him.

Learned Sessions Judge, after hearing the arguments of learned Additional Public Prosecutor & learned counsel for the accused, convicted and sentenced the accused, as mentioned in para 1 of this judgment.

We have heard Mr. K.K. Singh, Adv. for the appellant and Mr. Deo, Addl. Public Prosecutor with Mr. Akhil Mishra, P.L. for the State.

Homicidal death of Ramkali has not been disputed by learned counsel for the accused/appellant. Apart from that, from the dying declaration (Ex.P-8) of Ramkali recorded by PW-7 Shri Ashok Tiwari, Executive Magistrate in which she has stated that she received the burn injuries on account of throwing of burning kerosene lamp on her, as also the evidence of Dr. S.K. Dadu (PW-15), who has stated that Ramkali died on account of complication resulted on account of stoppage of functioning of heart and

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respiratory system, it is established that the death of Ramkali was homicidal in nature.

As far as involvement of accused/appellant in commission of crime in question is concerned, witnesses namely Fagni Bai (PW-4) & Mohanlal (PW-5) have turned hostile. Even first independent witness namely Awadhram (PW-3), landlord of the accused/appellant, who reached on the scene of occurrence immediately, has also been declared hostile, as he has not supported the prosecution case in toto. But the fact remains that he has stated that accused along with his wife Ramkali & three daughters started living in his house as a tenant 5-6 months prior to the date of incident at the monthly rent of Rs.50/-. On the fateful day, when he returned house from his work in the evening, accused, his wife and his three daughters were inside their room and doors of the room were closed. After sometime he heard the screams of Bishahin Bai, younger daughter of the deceased & accused and she came out of the room. On hearing the screams, he along with his wife came out of their room. When he entered room of the accused/appellant, he saw that he was sitting over a cot, he enquired from the accused as to what he has done and why he is quarreling with his wife, but he did not reply. He saw that Ramkali was in burnt condition and her two daughters were also in the room. In the meantime, Ramkali came out of the room and sat near the ditch meant for dumping garbage. Thereafter, he informed the Sarpanch of the village. Therefore, from the above evidence of Awadhram (PW-3), who is an independent witness, it is established that at the time of incident, the accused/appellant was in the room with his wife

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Ramkali received the burn injuries inside the room and she, in her dying declaration Ex.P-8 recorded by PW-7 Shri Ashok Tiwari, Executive Magistrate, has categorically stated that her husband after quarrelling with her threw a burning kerosene lamp on her, as he used to doubt her fidelity. PW-7 Shri Ashok Tiwari, Executive Magistrate, who recorded the dying declaration has categorically stated that the doctor gave the certificate that Ramkali was in a fit state of mind to give statement and in the last, the doctor gave the certificate that the thumb impression of Ramkali could not be obtained on account of the fact that her thumbs were in burnt condition.

In the cross-examination of any witness, defence has not been able to elicit any circumstance, which goes to show that Ramkali gave dying declaration in order to implicate the accused in a false case or she was having any grudge against the accused/appellant, on the contrary, dying declaration of Ramkali is corroborated by the evidence of PW-3 Awadhram. Accused/ appellant, who was in the room when Ramkali sustained burn injuries, but he has not explained in his statement under Section 313 of the Cr.P.C. as to how Ramkali sustained burn injuries. The accused was the best person to explain as to how the deceased sustained burn injuries because at the time when Ramkali received burn injuries, he was present in the room. Moreover, receiving of burn injuries by throwing a burning kerosene lamp on Ramkali stands corroborated by circumstantial evidence also because the burnt clothes taken into possession by the Investigating Officer from the place of occurrence were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report Ex.P-24 has been received, in which it has been mentioned that smell of kerosene was present on the pant sari

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(Article-A), burnt blouse (Article-B), burnt petticoat (Article-C), glass bottle, which was being used as a lamp (Article-D), cap along with wick. Therefore, from the evidence of Awadhram (PW-3), who reached on the scene of occurrence, saw Ramkali in burnt condition and also that the accused was sitting on a cot coupled with the circumstantial evidence that as per FSL report in the clothes of deceased smell of kerosene was present; Kerosene lamp with wick were recovered from the place of occurrence coupled with the dying declaration of Ramkali establishes beyond all reasonable doubts that the accused was the author of the crime in question and to this extent, we do not find any illegality or irregularity in the judgment of the trial Court.

Learned counsel for the accused/appellant argued that Ramkali received burn injuries on 24.10.1997 and she succumbed to the injuries on 27.10.1997 and in a quarrel in a heat of passion the accused threw the burning kerosene lamp on Ramkali, as a result of which she got set ablaze and received burn injuries and ultimately succumbed to those burn injuries. Therefore, the intention to cause death of Ramkali cannot be attributed to the accused/appellant.

But, the argument advanced by learned counsel for the accused/appellant is devoid of merit, for the reason that it is true that initially the accused/appellant used to doubt the fidelity of his wife Ramkali and in a quarrel he threw the burning kerosene lamp on her and when Ramkali started burning on account of throwing of kerosene lamp on her, the accused did not try to save her, on the contrary when Awadhram (PW-3) came and enquired about him, he instead of intervening to save Ramkali, P.T.O. said that

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let her die. This conduct of the accused/appellant shows that even after setting Ramkali ablaze by throwing burning kerosene lamp on her, he did not try to extinguish the fire. Therefore, the intention of the accused to cause death of deceased by setting her on fire is established.

In the result, we do not find any illegality or infirmity in the judgment of the trial Court. The appeal is devoid of merit, same is liable to be dismissed and it is, accordingly, dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
V.K. Shrivastava
Judge